(2)

No. 86-1095

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

ELIZABETH J. KOHRIG,

Appellant,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Appellee.

On Appeal from the Supreme Court of Illinois

MOTION TO DISMISS OR AFFIRM

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QUESTION PRESENTED FOR REVIEW

Whether the Illinois Safety Belt Law, Ill. Rev. Stat. Ch. 95½, § 12-603.1, is a valid exercise by the Illinois General Assembly of the police power.

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Pursuant to Rule 16 of the Rules of the Supreme Court of the United States, appellee People of the State of Illinois respectfully requests that this Court dismiss this appeal or note probable jurisdiction and affirm the final judgment of the Illinois Supreme Court on the grounds that the decision below was so obviously correct and the question presented so insubstantial that further review is unwarranted.

STATEMENT OF FACTS

In December, 1984, the Illinois General Assembly enacted the Illinois Safety Belt Law, Ill. Rev. Stat. Ch. 95½, § 12-603.1. Governor James R. Thompson signed the Bill into law on January 8, 1985. Passage of the Safety Belt Law followed extensive debate in the General Assembly and the enactment of similar measures across the country. The Safety Belt Law requires all front-seat vehicle occupants to wear safety belts, but provides limited exemptions for those who are unable to wear safety belts for medical reasons, for persons in vehicles that are not equipped with safety belts, and for persons who must leave the vehicle frequently. Violation of the Safety Belt Law is a petty offense and carries a maximum penalty of $25.

Following an automobile accident in Marion County, Illinois, appellant Elizabeth J. Kohrig was cited for violating the Safety Belt Law. Appellant Kohrig challenged the constitutionality of the Law, arguing that mandatory safety belt use is unrelated to the public health, safety, and welfare, and that the Law therefore exceeds the scope of the police power. The Circuit Court agreed, held the statute unconstitutional, and dismissed the charge.

On direct appeal, the Illinois Supreme Court reversed the judgment of the Circuit Court and upheld the constitutionality of the Safety Belt Law. *People v. Kohrig*, 113 Ill. 2d 384 (1986).*

* For this Court's convenience, citations to the *Kohrig* opinion will be made by reference to the Appendix to appellant's Jurisdictional Statement, *i.e.*, "J.S. at A-5."

ARGUMENT

Summary disposition of this case is warranted. The Illinois Supreme Court's decision upholding the Safety Belt Law in the face of a due process challenge is obviously correct in light of this Court's decisions defining the constitutional right of privacy and delineating the scope of the police power. The issues were fully briefed before, and carefully considered by, the Illinois Supreme Court. Indeed, the Illinois Supreme Court cited and relied upon this Court's decisions throughout its opinion.

Moreover, there is no conflict for this Court to resolve. At least twenty-four states and the District of Columbia have mandatory safety belt use laws currently in force (see Appendix A hereto). Those courts that have considered the issue agree that the laws are constitutional. *Cashoili v. Nebraska*, No. 398, slip op. (Dist. Ct., Lancaster County, Neb., Dec. 19, 1985); *Wells v. State*, 130 Misc. 2d 113, 495 N.Y.S.2d 591 (1985); *People v. Weber*, 129 Misc. 2d 993, 494 N.Y.S.2d 960 (1985). Furthermore, the courts of 32 states have upheld mandatory motorcycle helmet laws in the face of identical constitutional challenges (see Appendix B hereto); there are no extant decisions to the contrary. This Court has twice summarily disposed of appeals from those decisions, and should also dispose summarily of this case.

I.

APPELLANT HAS NO CONSTITUTIONAL RIGHT OF PRIVACY TO OPERATE A MOTOR VEHICLE WITHOUT WEARING A SAFETY BELT.

The fundamental right of privacy recognized by this Court operates exclusively in the realm of intimate relationships, protecting individual autonomy with regard to contraception, marriage, procreation, and family relation-

ships. *See, e.g., Paris Adult Theatre I v. Slaton*, 413 U.S. 49, 65 (1973), and *Paul v. Davis*, 424 U.S. 693, 712-13 (1976), *cited in People v. Kohrig*, J.S. at A-7, A-8. As the Illinois Supreme Court observed, this Court consistently has refused to expand the narrow scope of the right of privacy. *See Bowers v. Hardwick*, 106 S. Ct. 2841, 2849 (1986), *cited in People v. Kohrig*, J.S. at A-7, A-8. The right of privacy is particularly inapplicable to actions taken on public highways, where states traditionally have enjoyed broad freedom and where expectations of privacy are already reduced. *See Bibb v. Navajo Freight Lines*, 359 U.S. 520, 530 (1959), *cited in People v. Kohrig*, J.S. at A-9. *Cf. Colorado v. Bannister*, 449 U.S. 1, 4 (1980) (no expectation of privacy violated in warrantless seizure of vehicle's contents).

Thus, the Illinois Supreme Court held: "it cannot be said that [appellant's] claimed right to decide whether or not to wear a safety belt on a public highway resembles those liberties identified by the Supreme Court as being included in the right of privacy protected by the fourteenth amendment." *People v. Kohrig*, J.S. at A-8. This holding is not, as appellant claims, the "questionable result" of a "second-guess" as to the law (J.S. at 8), but rather is the inevitable result of the Illinois Supreme Court's careful review and analysis of the United States Constitution and of this Court's pertinent decisions. As this Court repeatedly has observed, state courts are quite capable of analyzing and applying the provisions of the United States Constitution. "Under our federal system, the federal and state 'courts [are] equally bound to guard and protect rights secured by the constitution.' " *Rose v. Lundy*, 455 U.S. 509, 518 (1982), *quoting Ex Parte Royall*, 117 U.S. 241, 251 (1886).

Appellant's claimed right is plainly outside the scope of the right of privacy and consequently raises such an in-

significant issue of federal law that it does not warrant full review and consideration by this Court.

II.

SAFETY BELT USE AFFECTS THE HEALTH, SAFETY, AND ECONOMIC WELFARE OF THE GENERAL PUBLIC AND IS, THEREFORE, A VALID OBJECTIVE FOR THE EXERCISE OF THE GENERAL ASSEMBLY'S POLICE POWER.

In its *Kohrig* opinion, the Illinois Supreme Court held that the legislature could reasonably have found a relationship between safety belt use and the health, safety, and economic welfare of Illinois citizens. The court began its analysis with the observation that legislative decisions regarding highway safety are entitled to great judicial deference: "the legislatures, not the courts, have the primary role in our democratic society in deciding what the interests of the public require and in selecting the measures necessary to secure those interests." *People v. Kohrig*, J.S. at A-10. This Court has particularly recognized and protected the states' freedom to regulate use of the public highways. *See Bibb v. Navajo Freight Lines*, 359 U.S. 520 (1959), *cited in People v. Kohrig*, J.S. at A-9.

As the Illinois Supreme Court correctly concluded, the Safety Belt Law is directed to more than the personal safety of the individuals who must wear the belts. The Safety Belt Law protects the welfare of Illinois' citizenry by reducing both the huge drain on the State's economic and human resources and the ever-increasing insurance costs caused by deaths and severe injuries resulting from automobile accidents. Safety belt use also reduces the likelihood that an otherwise minor skid or collision will cause a driver to lose control of the car and thus imperil the safety and lives of others. The *Kohrig* court concluded (J.S. at A-13):

> The legislative debates clearly indicate that the legislators believed that safety-belt use would protect persons other than the belt wearers by helping drivers to maintain control of their vehicles, and that the law would promote the economic welfare of the State by reducing the public and private costs associated with serious injuries and deaths caused by automobile accidents.

Furthermore, the principle underlying appellant's challenge to the Safety Belt Law—that a regulation aimed at protecting the safety of the individual is beyond the constitutional bounds of the police power—is inconsistent with well-accepted principles of constitutional law. That principle, applied in other contexts, would invalidate many laws in any civilized society, from laws regulating the possession of narcotics to laws forbidding suicide, and including, in particular, federal regulations requiring airline passengers to buckle their safety belts. 14 C.F.R. § 91.14 (1985). The welfare of the individual necessarily affects the welfare of all of society. As this Court observed in *West Coast Hotel v. Parrish*, 300 U.S. 379, 394 (1937), " 'when the individual health, safety and welfare are sacrificed or neglected, the State must suffer' " (*quoting Holden v. Hardy*, 169 U.S. 366, 397 (1898)).

Mandatory motorcycle helmet use laws, which are indistinguishable in principle from mandatory safety belt use laws,* have been upheld in all 32 states that have considered the issue. *See People v. Kohrig*, J.S. at A-12, A-13; Appendix B hereto. This Court twice has summarily disposed of appeals from decisions upholding helmet laws in which the same constitutional issues were raised. *Simon v. Sargent*, 346 F. Supp. 277 (D. Mass.), *aff'd*, 409 U.S.

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* The Illinois Supreme Court acknowledged the similarity in these laws by overruling its prior decision holding a helmet law unconstitutional, the only decision of its kind in the nation. *People v. Fries*, 42 Ill. 2d 446 (1969), *overruled*, *People v. Kohrig*, J.S. at A-18.

1020 (1972); *Bisenius v. Karns*, 165 N.W.2d 377 (Wisc.), *appeal dismissed*, 395 U.S. 709 (1969).

Appellant contends without citation that the Illinois Supreme Court was required to subject the Safety Belt Law to strict scrutiny because the law is "criminal" in nature. (J.S. at 9.) The Safety Belt Law, however, creates a petty offense punishable only by a maximum fine of $25. Ill. Rev. Stat. Ch. 95½, § 12-603.1(d). As such it implicates no "fundamental constitutional right or liberty." *People v. Kohrig*, J.S. at A-10, A-11. *Cf. Duncan v. Louisiana*, 391 U.S. 145, 159 (1968) (petty offense may be tried without a jury).

Appellant also claims that the Safety Belt Law resulted from lobbying efforts. (J.S. at 8-9.) The Illinois Supreme Court, however, provides ample citation to the legislative record and to the statements of the Governor of Illinois reflecting the rational and legitimate purposes for which the Safety Belt Law was enacted. *People v. Kohrig*, J.S. at A-13 - A-17. Moreover, as this Court held in rejecting a similar challenge almost 40 years ago, a legislature's motivation for enacting a statute is irrelevant to that statute's constitutionality. *Daniel v. Family Security Life Ins.*, 336 U.S. 220, 224 (1949).

Finally, as the Illinois Supreme Court recognized, appellant's claim that safety belts may cause injuries is a "proper subject of discussion for the legislature, not the courts." *People v. Kohrig*, J.S. at A-18. This Court should not undertake a *de novo* analysis of the scientific and statistical evidence considered by the General Assembly. *Paris Adult Theatre I v. Slaton*, 413 U.S. 49, 60 (1973), *cited in People v. Kohrig*, J.S. at A-15.

Every day countless people pause briefly to buckle safety belts in their vehicles in compliance with state laws and in airplanes in compliance with federal law. After

careful consideration and extensive debate, the Illinois General Assembly adopted the Safety Belt Law as a reasonable means of promoting the health, safety, and welfare of the people of the State. The Illinois Supreme Court has concluded that the General Assembly acted well within the bounds of the police power. This Court need not devote its limited time to further review of these issues.

CONCLUSION

For the reasons stated herein, the People of the State of Illinois respectfully requests that this Court summarily dismiss this appeal or affirm the decision of the Illinois Supreme Court.

Respectfully submitted,

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Dated: January 30, 1987

APPENDIX A

SAFETY BELT STATUTES

California: West's Annotated California Codes, Vehicle Code, § 27315.

Connecticut: Connecticut General Statutes Annotated, Title 14, Chapter 246, § 100a.

Florida: Florida Statutes Annotated, Chapter 316, § 316.614.

Hawaii: Hawaii Revised Statutes, Title 17, Chapter 291.

Idaho: Idaho Code, Title 49, § 764.

Illinois: Illinois Revised Statutes, Chapter 95½, § 12-603.1.

Indiana: Indiana Statutes Annotated, Title 9, Article 8, Chapter 14.

Iowa: Iowa Code Annotated, § 321.445.

Kansas: H.B. 3160 (1985).

Louisiana: Louisiana Revised Statutes, § 32.1 (96)-(97) and 295.1.

Maryland: Annotated Code of Maryland, § 22-412.3.

Michigan: Michigan Statutes Annotated, § 9.2410(5).

Minnesota: Minnesota Statutes Annotated, § 169.686.

Missouri: Missouri Statutes Annotated, § 307.178.

New Jersey: New Jersey Statutes Annotated, § 39:3-762e.

New Mexico: Laws of 1985, Chapter 131.

New York: McKinney's Consolidated Laws of New York Annotated, Vehicle and Traffic Law, § 1229-c.

North Carolina: General Statutes of North Carolina, § 20-135.2A.

Ohio: Ohio Revised Code Annotated, § 4513.263.

Oklahoma: Oklahoma Statutes, Title 47, § 12-417.

Tennessee: Tennessee Code Annotated, Title 55, § 55-9-214.

Texas: Vernon's Texas Civil Statutes, Article 6701d, § 107c.

Utah: Utah Code Annotated, Title 41, § 41-6a-181.

Washington: Revised Code of Washington Annotated, Chapter 46.61.

District of Columbia: D.C. Law 6-73.

APPENDIX B

CASES UPHOLDING MANDATORY MOTORCYCLE HELMET LAWS

Alaska: *Kingery v. Chapple*, 504 P.2d 831 (1972).

Arizona: *State v. Beeman*, 541 P.2d 409 (Ariz. Ct. App. 1975).

Arkansas: *Penney v. North Little Rock*, 455 S.W.2d 132 (1970).

Colorado: *Love v. Bell*, 465 P.2d 118 (1970).

Connecticut: *State v. Burzycki*, 37 U.S.L.W. 2448 (Conn. Cir. Ct.), *cert. denied*, 252 A.2d 312 (1969).

Delaware: *State v. Brady*, 290 A.2d 322 (Del. Super. Ct. 1972).

Florida: *State v. Eitel*, 227 So. 2d 489 (1969); *Hamm v. State*, 387 So. 2d 946 (1980).

Hawaii: *State v. Cotton*, 516 P.2d 709 (1973).

Idaho: *State v. Albertson*, 470 P.2d 300 (1970).

Kansas: *Wichita v. White*, 469 P.2d 287 (1970).

Louisiana: *Everhardt v. New Orleans*, 217 So. 2d 400, *appeal dismissed and cert. denied*, 395 U.S. 212 (1968).

Maine: *State v. Quinnam*, 367 A.2d 1032 (1977).

Massachusetts: *Commonwealth v. Howie*, 238 N.E.2d 373, *cert. denied*, 393 U.S. 999 (1968).

Michigan: *People of Adrian v. Poucher*, 247 N.W.2d 798 (1976).

Minnesota: *State v. Edwards*, 177 N.W.2d 40 (1970).

Missouri: *State v. Cushman*, 451 S.W.2d 17 (1970).

New Hampshire: *State v. Merski*, 307 A.2d 825 (1973).

New Jersey: *State v. Krammes*, 252 A.2d 223 (N.J. Super. Ct.), *cert. denied*, 254 A.2d 800 (1969).

New Mexico: *City of Albuquerque v. Jones*, 535 P.2d 1337 (1975).

New York: *People v. Bennett*, 391 N.Y.S.2d 506 (1977).*

North Carolina: *State v. Anderson*, 166 S.E.2d 49 (1969).

North Dakota: *State v. Odegaard*, 165 N.W.2d 677 (1969).

Ohio: *State v. Stouffer*, 276 N.E.2d 651 (Ohio Ct. App. 1971).

Oklahoma: *Elliott v. Oklahoma City*, 471 P.2d 944 (1970).

Oregon: *State v. Fetterly*, 456 P.2d 996 (1969).

Pennsylvania: *Commonwealth v. Arnold*, 258 A.2d 885 (Pa. Super. Ct. 1969).

Rhode Island: *State v. Lombardi*, 298 A.2d 141 (1972).

Texas: *Ex parte Smith*, 441 S.W.2d 544 (1969).

Utah: *State v. Acker*, 485 P.2d 1038 (1971).

Vermont: *State v. Solomon*, 260 A.2d 377 (1969).

Washington: *State v. Zektzer*, 533 P.2d 399 (Wash. Ct. App.), *cert. denied*, 423 U.S. 1020 (1975).

Wisconsin: *Bisenius v. Karns*, 165 N.W.2d 377, *appeal dismissed*, 395 U.S. 709 (1969).

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* In New York, one court held the helmet statute unconstitutional, *People v. Smallwood*, 277 N.Y.S.2d 429 (1967), but five courts ruled in favor of the statute. *People v. Bennett*, 391 N.Y.S. 2d 506 (1977); *People v. Carmichael*, 288 N.Y.S.2d 931 (1968); *People v. Schmidt*, 283 N.Y.S.2d 290 (1967), *appeal dismissed*, 243 N.E.2d 153 (1968); *People v. Bielmeyer*, 282 N.Y.S.2d 797 (1967); *People v. Newhouse*, 287 N.Y.S.2d 713 (1968).